

REMARKS

Claims 23-34 and 47-54 are now pending in the application. Claims 27-34 and 47-54 are allowed. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

REJECTION UNDER 35 U.S.C. § 102

Claims 23-26 and 29 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mufford (U.S. Pat. No. 6,186,254). This rejection is respectfully traversed.

With respect to claim 23, Mufford fails to disclose a controller that controls a hydrogen supply and an air supply to power a heater to warm a fuel cell stack and a water supply **while a vehicle is not running**. This much has been settled pursuant to the Pre-Appeal Conference held after Applicants' request filed March 31, 2009. (See p. 2 of the Office Action mailed June 22, 2009). The Examiner now disregards the limitation of claim 23 of "when said vehicle is not running" and refuses to give the limitation any weight. (See p. 2 and p. 4 of the Office Action mailed June 22, 2009). Applicants respectfully submit that this disregard and refusal are improper.

MPEP § 2173.05(g) states that "[a] functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients)." The limitation that the controller that controls a hydrogen supply and an air supply . . . "while a vehicle is not running" is such a functional limitation. More specifically, the portion of claim 23 that states "while the vehicle is not running" is part of a functional limitation that defines the controller by what it does instead of by its structure. What the controller does is described in claim

23 as “controls a hydrogen supply and an air supply to power a heater to warm a fuel cell stack and a water supply,” and the timing for when the controller does what it does is described as “while a vehicle is not running.”

Applicant respectfully notes that MPEP § 2173.05(g) states that “there is nothing inherently wrong with defining some part of an invention in functional terms.” Further, MPEP § 2173.05(g) expressly states that “[a] functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.” (Emphasis added).

Therefore, the Examiner’s failure to afford any weight to the limitation of while the vehicle is not running” is improper.

Applicants again respectfully note that for anticipation to be present under 35 U.S.C §102(b), all of the limitations of the claim must be inherent or expressly disclosed and must be arranged as in the claim. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ.2d 1057 (Fed. Cir. 1988). Here, Mufford fails to disclose a controller that controls a hydrogen supply and an air supply to power a heater to warm a fuel cell stack and a water supply **while a vehicle is not running** as claim 23 explicitly recites.

For at least the above reasons, Applicants respectfully assert that claim 23 is allowable. The remaining claims depend from claim 23 and, therefore, are allowable for at least similar reasons.


CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: _____


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